IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Income Tax Appeal No. 73 of 1999

The Commissioner of Income Tax, Kolhapur .. Appellant
V/s.
Om Shri Laxminarayan Balmukund
S.K. Pant, Kolhapur .. Respondent

WITH
Income Tax Appeal No. 74 of 1999

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V/s.
Om Shri Laxminarayan Balmukund
S.K. Pant, Kolhapur .. Respondent

Dr. P. Daniel for the Appellant
Mr. S.N. Inamdar for the Respondent

CORAM : S. RADHAKRISHNAN &
J.H. BHATIA, JJ.
DATED : 04.07.2005.

P.C.:-

1. Heard the learned counsel for the Appellant and the learned counsel for the Respondent. In the above Appeals, the following substantial question of law has been raised:-

> Whether on the facts and in the circumstances of the case and in law, the I.T.A.T. was justified in allowing the assesse's claim of exemption of income under section 11 of the Income Tax Act, 1961, relying on the decision of the Madras High Court in the case of Thanthi Trust Vs. C.B.D.T. (213 ITR 639); when in fact consequent upon the enactment of the Finance Act, 1983, sub-sections (1), (2), (3) and (3A) of section 11 shall not apply unless the business is carried on by an institution wholly for charitable purposes and the work in connection with business is mainly carried on by the beneficiaries of the institution and as such in the case of the assessee, since the cloth business was not carried on by the beneficiaries of the institution, the exemption under section 11 is not available to the assessee?

2. Both the learned counsel for the Appellant as well as the learned counsel for the Respondent categorically state that the question of law involved in the above has already been concluded by the Supreme Court in **Assistant Commissioner of Income Tax v. Thanthi Trust 2001 (247) ITR 785**. In the above judgment, the Supreme Court has held as under:-

> "The substituted sub-section (4A) states that the income derived from a business held under trust wholly for charitable or religious purposes shall not be included in the total income of the previous year of the trust or institution if "the business is incidental to the attainment of the objective of the trust or, as the case may be, institution" and separate books of account are maintained in respect of such business. Clearly, the scope of sub-section (4A) is more beneficial to a trust or institution than was the scope of sub-section (4A) as originally enacted. In fact, it seems to us that the substituted sub-section (4A) gives a trust or institution a greater benefit than was given by section 13(1)(bb). If the object of Parliament was to give trusts and institutions no more benefit than that given by section 13(1)(bb), the language of section 13(1)(bb) would have been employed in the substituted sub-section (4A). As it stands, all that it requires for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of objectives of the trust or institution. A business whose income is utilised by the trust or institution is, surely, a business which is incidental to the attainment of the objectives of the trust. In any event, if there be any ambiguity in the language employed, the provision must be construed in a manner that benefits the assessee. The trust, therefore, is entitled to the benefit of section 11 for the assessment year 1992-93 and thereafter. It is, we should add, not in dispute that the income of its newspaper business has been employed to achieve its objectives of education and relief to the poor and that it has maintained separate books of account in respect thereof."

3. In view thereof, the question is answered in the affirmative, in favour of the assessee and against the Revenue. Appeals stand disposed of.

(S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)